

77-21-2 Procedure to secure attendance in another state.

If a judge of a court of record in any state, which by its laws has made provisions for commanding persons within that state to attend and testify in this state, certifies under the seal of the court that there is a criminal prosecution pending in the court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in the prosecution or grand jury investigation and that his presence will be required for a specified number of days, upon presentation of the certificate to any judge of a court of record within this state in the county in which the person is found, the judge shall fix a time and place for a hearing and make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct the witness to be immediately brought before him for the hearing, and the judge at the hearing being satisfied of the desirability of custody and delivery, for which determination the certificate shall be prima facie proof of desirability, may, in lieu of issuing subpoena or summons, order the witness to be immediately taken into custody and delivered to an officer of the requesting state.

If the witness who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 20 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and \$30 for each day he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Enacted by Chapter 15, 1980 General Session